

ORIGINAL

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION



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Commissioner

APR 21 2010

BOB STUMP
Commissioner

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In the Matter of the Joint Application of :

Comtel Telecom Assets LP, :
Matrix Telecom, Inc. :
and :
Americatel Corporation :

T-20423A-10-0153
T-03228A-10-0153
Docket No. T-03517A-10-0153
(Expedited Approval Requested)

For Approval (1) of the Transfer of Assets :
and Customers from Comtel Telecom Assets :
LP to Matrix Telecom, Inc. and (2) for :
Matrix Telecom, Inc. and Americatel Corpo- :
ration to Encumber Their Assets :

**JOINT APPLICATION FOR AUTHORITY TO
TRANSFER A CUSTOMER BASE AND ENCUMBER ASSETS**

Comtel Telecom Assets LP ("Comtel"), Matrix Telecom, Inc. ("Matrix") and Americatel Corporation ("Americatel," and together with Comtel and Matrix, the "Applicants"), pursuant to A.R.S. § 40-285(A) and R14-2-1107 of the Arizona Administrative Code, respectfully request approval from the Arizona Corporation Commission ("Commission"), to the extent required, for (1) Comtel to transfer substantially all of its assets and customers to Matrix (the "Transfer") and (2) Matrix and Americatel to encumber their assets under certain financing arrangements (the "Financing"). As a result of the Transfer, Comtel's current customers and the

assets to support the provision of services to those customers will be transferred to Matrix, which will become the service provider for those customers. As described below, because the rates, terms or conditions of the services being received by customers will not change as a result of the assignment, and the services will continue to be provided under the same applicable brand name, the proposed Transfer will be virtually transparent to customers of Comtel in terms of the services that those customers receive. Since Matrix already holds a certificate of public convenience and necessity ("Certificate"), the Certificate of Comtel is not being transferred to Matrix and, therefore, Comtel requests that its Certificate and tariffs be cancelled upon notification by Applicants that the Transfer was completed. No assets or customers will be transferred to Americatel through the proposed transaction.

In support of this filing, Applicants provide the following information:

I. DESCRIPTION OF THE APPLICANTS

A. Comtel Telecom Assets LP

Comtel is a limited partnership organized under the laws of the State of Texas. The principal office for Comtel is located at 433 Las Colinas Blvd. E., Suite 1300, Irving, TX 75039. Comtel is majority owned by Comtel Assets Corp., which in turn is wholly owned by Denham Commodity Partners Fund III LP, a private equity fund.

Comtel completed the acquisition of substantially all of the assets of VarTec Telecom, Inc. and certain of its subsidiaries in June 2006 and continues to operate those assets. Comtel provides intrastate, interstate and international long distance services throughout the continental United States and local exchange services in the District of Columbia and all states except Alaska, Connecticut, Hawaii and Rhode Island. Comtel is authorized to provide interexchange telecommunications services in every state and local exchange and exchange access telecommunications services in the District of Columbia and every state except Alaska, Hawaii, and

Virginia (in Virginia, Comtel's affiliate, Comtel Virginia LLC is authorized to provide telecommunications services). In Arizona, Comtel is authorized to use the trade names VarTec Telcom, VarTec Solutions, Excel Telecommunications and Clear Choice Communications to provide resold and facilities-based local exchange service and resold interexchange services pursuant to Decision No. 69175 issued by the Commission in Docket Nos. T-20423A-05-0677, T-03401A-05-0677, T-02584A-05-0677, and T-03188A-05-0677 on December 5, 2006. Comtel is also authorized by the FCC to provide interstate and international telecommunications services.

Comtel has one (1) employee in Arizona.

B. Matrix Telecom, Inc.

Matrix is a Texas corporation with principal offices located at 7171 Forest Lane, Suite 700, Dallas, Texas 75230. Established in 1991, Matrix is a competitive provider of integrated communications services including local, 1+ long distance and toll-free voice services plus a wide range of data services, such as dedicated Internet access, frame relay and point-to-point transmission services, chiefly to enterprise customers. Matrix is authorized to provide telecommunications service in all 50 states and the District of Columbia. In Arizona, Matrix is authorized to provide facilities-based local exchange telecommunications service pursuant to authority granted in Decision No. 69944 issued in Docket No. T-03228A-06-0800 on October 16, 2007. Matrix is also authorized to provide resold local exchange services pursuant to authority granted in Decision No. 68343 issued in Docket No. T-0322BA-05-0244 on December 9, 2005, and competitive resold interexchange telecommunications services pursuant to authority granted in Decision No. 65926 issued in Docket No. T-03338A-96-0392 on May 16, 2003. Matrix is also authorized by the FCC to provide interstate and international long distance services.

C. Americatel Corporation

Americatel is a Delaware corporation with principal offices located at 7361 Calhoun Place, Suite 650, Rockville, Maryland 20855. Serving the needs of United States customers with connections to Latin America and the Caribbean, Americatel provides international and domestic facilities-based and resold long distance services, including "dial around" casual calling (i.e., 1010XXX) service and presubscribed 1+ calling services, in each of the 48 contiguous states. Through common parent holding company ownership, Americatel and Matrix are affiliated service providers. In Arizona, Americatel is authorized to provide competitive interLATA/intraLATA resold telecommunications services, except local exchange services, pursuant to authority granted in Decision No. 61054 issued in Docket No. T-03517A-98-0089 on August 6, 1998.

II. CONTACTS

Questions or any correspondence, orders, or other materials pertaining to this filing should be directed to the following:

For Applicants:

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With copies to:

Scott M. Klopach
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and:

Jonathan Dennis
Senior Vice President, General
Counsel and Secretary
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jdennis@excel.com

III. DESCRIPTION OF TRANSFER OF ASSETS AND CUSTOMERS

Pursuant to an Asset Purchase Agreement ("Agreement") dated as of March 13, 2010, between Matrix and Comtel, Applicants propose to complete a transaction ("Transaction") through which Matrix will acquire certain assets of Comtel, including Comtel's customer bases and substantially all of the assets used in Comtel's provision of telecommunications services.¹ As a result of the proposed Transaction, Matrix will replace Comtel as the service provider in Arizona. Subject to receipt of the required regulatory approvals, the Transaction is expected to close in the second quarter of this year (the "Closing Date").

Applicants emphasize that although the proposed Transaction will involve a transfer of customers, immediately following the proposed Transaction, all of those customers will continue to receive service from Matrix under the same rates, terms and conditions as the services currently provided, and under the same applicable brand name.² As a result, the proposed Transaction will be almost seamless and virtually transparent to customers served by Comtel in terms of the services that they currently receive. All of the affected customers will receive notice.³ A sample of

¹ Matrix intends to adopt the relevant portions of Comtel's tariffs as directed by the Commission.

² Comtel does not have any assets physically located in Arizona.

³ See 47 C.F.R. § 64.1120(e), requiring affected telecommunications subscribers to receive notice no later than 30 days before a planned transfer.

the notice that will be sent to customers is provided as Exhibit A. Moreover, because Matrix is acquiring substantially all of the assets of Comtel necessary to provide service to the transferred customers, Matrix will have all of the assets required to continue to provide high-quality services to the customers it acquires.

Matrix is well-qualified to provide service to Comtel's customers. Matrix currently provides local and long distances telecommunications services in all states except Alaska, and in the District of Columbia.⁴ Matrix's operations will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise.

IV. DESCRIPTION OF FINANCING ARRANGEMENTS

In order to finance part of the consideration for the Transaction, the Applicants expect that Matrix will obtain seller financing from Comtel for which Americatel would act as a co-guarantor and pledge certain assets as security as described below.⁵ The financing is expected to consist of a secured promissory note in the initial principal amount of up to \$17 million (the "Seller Note"). The Seller Note would be subordinated only to Matrix's and Americatel's current senior lender under their existing credit facility (the "Senior Credit Facility"), which will remain in place.⁶ The Seller Note will be secured by a second priority lien on all collateral pledged under the Senior Credit Facility, which is substantially all of the assets of Matrix and Americatel. The Seller Note is expected to have a maturity of the earlier of (a) twenty-four (24)

⁴ In Virginia, intrastate telecommunications services are provided by Matrix's subsidiary, Matrix Telecom of Virginia, Inc.

⁵ To the extent that Matrix serves as a borrower under the financing arrangement, it is exempt from the provisions of A.R.S. § 40-301 et seq. pursuant to the provisions of A.R.S. § 40-301.D. Also, none of the companies involved in this Application is a class A entity so the affiliated rules do not apply.

⁶ Matrix and Americatel obtained approval for the Senior Credit Facility in Decision 70184 on February 27, 2008.

months from closing of the Transaction and (b) the payment in full, in cash, of the Senior Credit Facility. The interest rate is expected to be ten percent per year.

V. PUBLIC INTEREST CONSIDERATIONS

The proposed Transaction described above will serve the public interest by ensuring that the assigned customers enjoy continuity of high-quality telecommunications service. In particular, the assignment of Comtel's customers, together with the transfer of other assets required to serve those customers, will ensure that the customers continue to receive uninterrupted interstate and international services. The customers will be served by carriers with significant technical, managerial and financial resources.

Given the increasingly complex and competitive nature of the telecommunications and capital markets and for other business reasons, Applicants seek to complete the proposed Transaction as soon as possible. Accordingly, Applicants respectfully request that the Commission process, consider, and approve this Application as expeditiously as possible.

VI. REQUEST FOR EXPEDITED REVIEW

Applicants are seeking to complete the proposed Transaction as expeditiously as possible in order to minimize customer confusion and realize the benefits of the proposed Transaction. Accordingly, Applicants respectfully request that the Commission expedite the processing of this application and grant the requested authority as soon as possible, but no later than the Commission's Open Meeting scheduled for June 22-23, 2010, to permit Applicants to consummate the Transaction by the end of the second quarter of 2010.

VII. REQUEST FOR WAIVER OF SLAMMING AND CRAMMING RULES

As noted above, written notice of the Transaction and of the customer base transfer will be provided to Comtel's Arizona customers via First Class mail pursuant to Section 64.1120(e) of the FCC's rules, which requires notice at least 30 days prior to the transfer of affected

customers and the anticipated closing date.⁷ A sample of the customer notification is attached hereto as **Exhibit A**. Applicants respectfully request, to the extent necessary, that the Commission grant a waiver of AAC R14-2-1904 *et seq.* and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases provided in Section 64.1120(e).

Applicants respectfully request that the Commission, to the extent applicable, grant a waiver of AAC R14-2-2001-2007 (the "Cramming Rules"), which, among other things, requires a telecommunications company to obtain authorization from a customer when ordering telecommunications products and services in order to prevent unauthorized carrier charges on their bill. As described herein, Matrix is in the process of purchasing Comtel's assets, including customers, and the affected customers will receive the same services as they currently receive under the same rates, terms and conditions. Applicants do not believe that the Cramming Rules apply to this proceeding because Comtel's customers are being transferred to Matrix. No new products and services are being ordered from Matrix and no new charges will be assessed as a result of the transaction.

To the extent that the Cramming Rules arguably apply to this transaction, Applicants respectfully submit that it is in the public interest to grant a waiver of the rules in this case because current Comtel customers will receive at least 30 days notice of the transaction as required by the FCC's customer migration rules; therefore, customers will be given full notice that their current services will be provided by Matrix after the transaction is completed, and that there will be no change in the quality or cost of their services as a result of the transaction.

⁷ 47 C.F.R. § 64.1120(e).

VIII. REQUEST FOR WAIVER OF DISCONTINUANCE RULES

Applicants respectfully request that the Commission grant a waiver of AAC R14-21107, which governs a telecommunications company's discontinuance of competitive local exchange or interexchange services in the state. Applicants do not believe that the discontinuance rule applies to this proceeding because it involves the purchase of Comtel's assets (*i.e.*, its customers) by Matrix; therefore, service to the acquired customers is not being discontinued.⁸ Current Comtel customers will receive at least 30 days notice of the transaction as required by the Federal Communications Commission's customer migration rules. It would be confusing for customers to *also* receive a notice regarding a Comtel discontinuance of service or for the planned customer transfer notice to include a discussion regarding a discontinuance since no affected customer will be discontinued as a result of the transaction. *See* Decision No. 70706 (waiving discontinuance rules in transfer of control case).

In the event that the Commission does not believe that a waiver of the rule in its entirety is appropriate, Applicants respectfully request that the Commission grant a waiver of AAC R14-21107(B) which requires a telecommunications company providing competitive local exchange or interexchange service to publish legal notice of an application to discontinue or abandon services in counties affected by the application within 20 days of the Application. As stated herein, Matrix will acquire the customer accounts of Comtel in the state of Arizona, and those customers will continue to receive high quality telecommunications services at the same rates, terms and conditions as currently provided by Comtel. Written notice of this transaction and of the customer base transfer will be provided to Comtel's Arizona customers via First Class mail at least 30 days prior to the transfer. Published notice to the entire community is

⁸ Commission Staff has previously come to this same conclusion. *See* Docket No. T-0376IA-04-0710, Addendum to Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain customers qualifies as a discontinuance of service or an abandonment of any portion of its service area. Therefore, Staff does not believe that AAC RI4-2-1107 applies").

therefore unnecessary. The Commission's waiver of R14-21107(B) will serve the public interest and Applicants will provide the affected customers with ample notice of the transaction.

IX. REQUEST TO CANCEL COMTEL CERTIFICATIONS AND ASSOCIATED TARIFFS

Following the Transaction, Matrix will hold Comtel customer accounts and assume Comtel's telecommunications operations in Arizona. Therefore, Comtel requests that, upon notification from Applicants that the Transaction has been completed, the Commission Comtel's authority to provide telecommunications service granted in Decision No. 69175.

X. CONCLUSION

WHEREFORE, for the reasons set forth above, Applicants request the Commission grant all authority necessary for (1) Comtel to transfer substantially all of its assets and customers to Matrix and (2) Matrix and Americatel to enter into certain financing arrangements described herein. Applicants also request a waiver of AAC R14-2-1904 et seq., AAC R14-2-2001-2007 and AAC R14-21107(B) and whatever further relief that the Commission deems appropriate to authorize the consummation of the Transaction described herein. Finally, Comtel requests that its Certificate and tariffs be cancelled upon notification by Applicants that the Transfer was completed.

RESPECTFULLY SUBMITTED this 21st day of April, 2010.

LEWIS AND ROCA LLP



Thomas H. Campbell
Michael T. Hallam
40 North Central Avenue
Phoenix, AZ 85004

Counsel for Applicants

ORIGINAL and thirteen (13) copies
of the foregoing filed this 21st day
of April, 2010 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered this
21st day of April, 2010 to:

Lyn Farmer, Esq.
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Janice Alward, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

A handwritten signature in cursive script, reading "Betty J. Griffin", is written over a horizontal line.

EXHIBIT A

Sample Customer Notice

IMPORTANT INFORMATION ABOUT YOUR SERVICE

Dear Excel Telecommunications, VarTec Telecom or Clear Choice Communications Customer,

Excel Telecommunications, VarTec Telecom and Clear Choice Communications (the "Companies") and Matrix Telecom, Inc. ("Matrix") are pleased to advise you that Matrix will acquire certain assets and customers of Companies' telecommunications business in your area. Following completion of the transaction, the service you currently receive from Excel Telecommunications, VarTec Telecom or Clear Choice Communications will continue under their brand names, which were acquired by Matrix. Matrix prides itself on its ability to build long-term relationships with its customers and looks forward to serving you.

Subject to approval by the Federal Communications Commission and state regulators, the transaction is expected to be completed **on or after [DATE]**, at which time Matrix will assume ownership of the Excel Telecommunications, VarTec Telecom and Clear Choice Communications brands and will become your service provider as described above. **You are not required to do anything to continue receiving the high-quality service you have come to expect at the same competitive rates you currently pay, and your telephone number will not change as a result of the transfer.** Matrix will pay any carrier change charges associated with the transfer of your account to Matrix. If you have arranged a preferred carrier freeze through your local carrier with respect to any services involved in this transfer, this freeze will be removed in order to transition the services to Matrix; following the transfer, you must contact your local carrier or, if Excel Telecommunications or VarTec Telecom is your local carrier, Matrix to reinstate the freeze. Notice of any future changes in rates, terms and conditions of service will be provided to you by mail or in your bill, or as otherwise provided in your service contract, if you have one.

Matrix is dedicated to earning and keeping your business. We are confident that this transaction will strengthen the quality of services that you receive from the Companies today. We recognize that you have the right to change providers at any time provided another service provider is available, and up to 90 days after receiving this notice regardless of the terms of your service contract, if you have one. We hope, however, that you choose to remain a customer with Matrix doing business as Excel Telecommunications, VarTec Telecom and Clear Choice Communications, and thereby continue to enjoy under Matrix the same high-quality communications services you currently receive from the Companies. If you do want to select another provider, you should contact that provider directly. Assuming you do not transfer your service to a different provider by **[DATE]**, Matrix will become your service provider on or after **[DATE]**.

Prior to and after the actual transfer date, Excel Telecommunications, VarTec Telecom or Clear Choice Communications will continue to be responsible for all customer service inquiries, complaints, billing issues and service questions, and you should contact the Companies' customer services representatives at the following numbers:

Excel Local: 1-877-668-0808

Excel Long Distance: 1-800-875-9235

VarTec Local: 1-800-708-7395

VarTec Long Distance: 1-800-583-6767

Clear Choice Support: 1-800-668-4872

Please continue to use these customer service contacts following the transfer.

Excel Telecommunications, VarTec Telecom and Clear Choice Communications thank you for your business and Matrix looks forward to providing you with superior products and services for many years to come.

Sincerely,

Excel Telecommunications
VarTec Telecom
Clear Choice Communications
Matrix Telecom, Inc.

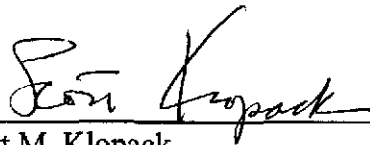
VERIFICATION

STATE OF TEXAS :

: ss.

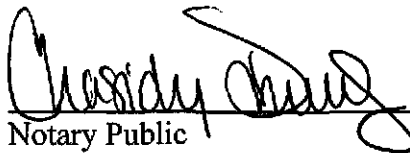
COUNTY OF DALLAS :

I, Scott M. Klopach, state that I am General Counsel of Matrix Telecom, Inc. ("Matrix"), and Americatel Corporation ("Americatel"), parties to the foregoing filing; that I am authorized to make this Verification on behalf of Matrix and Americatel; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document with respect to Matrix and Americatel are true and correct to the best of my knowledge, information, and belief.



Scott M. Klopach
General Counsel
Matrix Telecom, Inc.
Americatel Corporation

Sworn and subscribed before me this 22 day of March, 2010.



Notary Public

My commission expires:



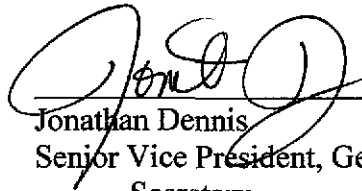
VERIFICATION

STATE OF TEXAS :

: ss.

COUNTY OF DALLAS :

I, Jonathan Dennis, state that I am Senior Vice President, General Counsel, and Secretary of Comtel Assets Inc., sole general partner of Comtel Telcom Assets LP ("Comtel"), a party to the foregoing filing; that I am authorized to make this Verification on behalf of Comtel; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document with respect to Comtel are true and correct to the best of my knowledge, information, and belief.



Jonathan Dennis
Senior Vice President, General Counsel, and
Secretary
Comtel Assets Inc., General Partner of
Comtel Telcom Assets LP

Sworn and subscribed before me this 18 day of March 2010.



Notary Public

My commission expires: 7/25/2012

